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COMMISSION ON HUMAN RIGHTS

Forty-eighth session

SUMMARY RECORD OF THE 22nd MEETING

Held at the Palais des Nations, Geneva,
on Tuesday 11 February 1992, at 3 p.m.

Chairman: Mr. SOLT (Hungary)

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The meeting was called to order at 3.15 p.m.

QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR PUNISHMENT, IN PARTICULAR:

(a) TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

(b) STATUS OF THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

(c) QUESTION OF ENFORCED OR INVOLUNTARY DISAPPEARANCES

(d) QUESTION OF A DRAFT OPTIONAL PROTOCOL TO THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (agenda item 10) (continued) (E/CN.4/1992/13-16, 17 and Add.1, 18 and Corr. 1 and Add. 1, 19/Rev.1, 20, 62-63; E/CN.4/1992/NGO/4 and NGO/9; E/CN.4/1991/17; E/CN.4/1991/20 and Add.1; E/CN.4/1991/NGO/22; E/CN.4/Sub.2/1991/9, 26, 28/Rev.1, 29, 30 and Add.1-4; A/46/46, 618 and Corr. 1, 703; A/Res/46/110)

1. Mr. BALIAN (Human Rights Advocates) said that, despite a universal revulsion against torture and despite the number of international instruments prohibiting, it was still used in a large number of countries, as evidenced by the Special Rapporteur on torture in his report (E/CN.4/1992/17).

2. His organization was particularly concerned about the situation in Bhutan, where there had been an upsurge of arbitrary arrests, detentions, torture and deaths of political opponents in custody. Bhutanese refugees in Nepal had attested to bad conditions of detention, as well as to ill-treatment and torture. Disappearances from places of detention had also been reported.

3. Detention conditions in Tibet were also a matter of concern. The Special Rapporteur and a number of non-governmental organizations had provided information regarding cases of torture, arbitrary arrests and summary executions of Tibetans. Human Rights Advocates continued to receive information that detainees were systematically tortured and a large number of them had required to be hospitalized after their release from prison. A number had died as a result of abuse.

4. The human rights situation in Turkey was also a matter of concern. Although Turkey had ratified the international instruments against torture and its Constitution prohibited the practice, prisoners continued to be tortured while being held incommunicado in secret places of detention and were on occasion summarily executed. According to reliable sources, 90 per cent of political prisoners and 50 per cent of criminals were subjected to various forms of torture. Human rights activists who dared to expose such mistreatment were in turn detained and tortured. The Special Rapporteur listed a variety of the physical tortures inflicted and reported that detainees' children were often forced to listen to the actual torture. Although some allegations of torture had been investigated by the Turkish authorities, prosecution of alleged perpetrators of torture had been sporadic and the ones found guilty had traditionally received light sentences. Limited

reforms that could contribute to fewer abuses had not been effectively implemented. In addition, the Turkish Government had ignored recommendations to prevent torture, such as the presence of an attorney during questioning and banning the use in court of confessions obtained under torture.

5. Human Rights Advocates was convinced that the draft optional protocol to the Convention against Torture would represent a major step towards the effective prevention of torture and therefore urged the Commission to consider the draft optional protocol as a priority item.

6. The forced repatriation of Vietnamese asylum seekers from detention centres in Hong Kong had been resumed in violation of the world plan of action approved by the Preparatory Committee of the International Conference on Indo-Chinese Refugees. Those forcibly repatriated were in danger of human rights abuses when they reached Viet Nam. Likewise the United States, on 3 February, had resumed the repatriation of asylum seekers who failed to prove their refugee status. The procedure used was open to criticism, for asylum seekers lacked essential safeguards, particularly the right to legal counsel and effective review procedures for cases denied in the first instance. Moreover, since the coup d'etat in Haiti on 30 September 1991, several non-governmental organizations had reported serious human rights abuses and violence by the security forces. According to repatriated Haitians who had returned to the United States for the second time to seek asylum, those who had been forcibly repatriated to Haiti risked violations of their basic rights. In view of the situation, the United States should extend to Haitians the provisions of the immigration laws whereby "temporary protected status" was granted to people whose return to the country of origin might present a danger.

7. Mr. EGUIGUREN (Andean Commission of Jurists) said he wished first to pay tribute to the Commission and to the Working Group on Enforced or Involuntary Disappearances on their work, which had generated an awareness of the problem in the international community. The issue of enforced or involuntary disappearances was ever-present, but it tended to occur in the context of internal armed conflict. States used forced disappearances as an anti-subversion strategy, thus violating human rights and undermining the principle of the rule of law.

8. In Chile, the Truth and Reconciliation Commission had been established in order to document human rights violations during the 17 years of military dictatorship and to recommend measures to prevent new violations. In its February 1991 report, the Commission had listed 2,115 cases of human rights violations and 957 cases of disappearances. In Colombia and Peru, two States with a constitutional regime that were seriously affected by internal political and social violence, further cases of forced disappearances had been reported in 1991. Despite some recent progress, Colombia was still cause for concern. The human rights situation was critical. According to the Working Group, 20 persons were reported to have disappeared in 1991; other human rights organizations had reported even higher numbers. The disappearances had been made easier by the existing legal framework and in particular by the Defence of Democracy Law or the Anti-Terrorist Law, as well as by the Defence of Justice Law, which did not clearly define the conditions relating to arrest

and detention and restricted habeas corpus. The situation in Peru was equally worrying. The Shining Path armed group was responsible for many crimes and particularly for the deaths of many peasants, popular leaders and officials as well as of members of the armed forces and the police. Most cases of forced disappearances, however, could be attributed to the security forces. According to the Working Group, there had been 231 cases of forced disappearances in 1990 and 117 in 1991. In addition, 2,042 cases had yet to be solved. The slight increase in forced disappearances in 1991 was the result of pressure from four committees of the United States Congress which had decided to suspend bilateral aid because of the human rights situation in Peru. The Andean Commission of Jurists considered that, in order to put an end to forced disappearances, it was essential for the rule of law to be reaffirmed, particularly in countries where there was internal armed conflict.

9. The problem of forced disappearances was linked to that of arbitrary arrests. The Andean Commission of Jurists considered that the establishment of the Working Group on Arbitrary Detention under Commission resolution 1991/42 as a very important step in the right direction. Freedom of the individual was a right recognized in the constitutions of all the countries of the Andean region, yet it was worrying to see that that right was flagrantly and repeatedly violated by individuals or groups. To put a stop to arbitrary detentions and involuntary disappearances it was imperative to ensure that protective mechanisms such as habeas corpus were operative. However as the Working Group had pointed out many times, habeas corpus was rarely used and often inefficient because of the limitations imposed by norms and legal procedures and the refusal of the judicial authorities to play their role in safeguarding human rights.

10. His organization attached great importance to the draft declaration on the protection of all persons from enforced or involuntary disappearances, which would not only prohibit those practices but would place an obligation on States to take effective steps to prevent or stop them and to investigate and punish those responsible. He hoped that the text of the draft declaration would be approved by the Commission, the Economic and Social Council and the General Assembly.

11. Mrs. COOK (Amnesty International) said she would like first to reiterate Amnesty International's support for the draft declaration on the protection of all persons from enforced or involuntary disappearences. Amnesty International associated itself fully with the remarks made by the representative of the International Commission of Jurists and strongly urged the Commission to adopt the declaration and transmit it to the higher organs of the United Nations.

12. The draft optional protocol to the Convention against Torture also merited careful consideration. It was no longer sufficient to react to reports of serious violations which had already occurred: it was time to prevent them. Two techniques could be employed: fact-finding, to identify practices which made it easier to commit human rights violations, and the initiation of dialogue with Governments to discuss remedial measures. For more than a decade, a number of Governments, non-governmental organizations and United Nations human rights bodies had supported the idea that international inspection of places of detention would be a particularly

effective way to combat torture. Too often, Governments did not fulfil their international obligations in that regard. The task of the committee of experts envisaged in the draft protocol would be to make sure that all States observed international rules against torture by visiting prisons in order to observe for themselves the conditions of detention and particular practices that might encourage torture and ill-treatment and to collect information which Governments themselves often lacked even when they had the political will to institute reform. The experts would enter into a dialogue with Governments and make practical suggestions for appropriate action. Such a system would complement existing mechanisms.

13. There were many countries where concrete measures could be very effective. In India, for example, torture was widespread particularly by the police in the state of Punjab and by the army and paramilitary forces in the state of Jammu-and-Kashmir. In Assam, persistent reports of rape had led to a court order prohibiting soldiers from taking women to army camps for questioning. In Turkey, although the Government had expressed its determination to end torture, the law permitted detention for up to 15 or even 30 days. Detainees were usually held incommunicado, thus making it easier to use torture as a matter of routine. Amnesty International hoped that the Government would urgently adopt reforms, including authorization for lawyers to be present during interrogation and ensuring that detainees were brought promptly before the court. In Egypt, political prisoners were held incommunicado and tortured and might not appear before a court for at least 30 days. Syria should take urgent measures to reform administrative detention provisions and end the practice of indefinite custody incommunicado, so as to reduce the number of cases of torture. In China, torture of political detainees had increased. The Government had not adopted any measures to prevent prisoners from being held incommunicado before trial or to stop the use of torture to obtain confessions. A great many Tibetans held for suspected involvement in support for Tibetan independence were reported to have been tortured. In Iran, political prisoners continued to be physically and psychologically tortured both in pre-trial detention and after conviction. In Sudan, political opponents continued to be arbitrarily arrested and tortured in secret detention centres where they were held without charge or trial. Lastly, in some countries, such as Mexico, torture was used even though it was prohibited by law and the Government had expressed an intention to end the practice.

14. Amnesty International was aware that the Commission had repeatedly postponed consideration of the draft optional protocol in order to take into account the experience of the European Committee for the Prevention of Torture created by the Council of Europe. The Committee had been functioning for two years. Its working practices could serve as a model for a universal system. Moreover, the text of the draft optional protocol avoided possible duplication with regional systems. Torture was a universal problem demanding a universal response. The adoption of the draft optional protocol would demonstrate the determination of the international community to eradicate the problem. It was for that reason that Amnesty International urged the Commission to set up a working group to examine the draft optional protocol and begin the discussion which would lead to a text for adoption.

15. Mr. GROSSE (International Federation of Human Rights) welcomed the first report submitted to the Commission by the Working Group on Arbitrary Detention (E/CN.4/1992/20) and emphasized the value of the dialogue between the Working Group and the Governments to which it had submitted cases; it was, for example, worthy of note that the Syrian Arab Republic had replied to the Working Group's request for information. His organization and its affiliate, the Committee for the Defence of Democratic Freedoms and Human Rights in Syria nevertheless continued to be concerned about the many reports of arbitrary detention, systematic use of torture and cases of disappearances in that country.

16. Missions or "visits" represented another form of international cooperation which his organization regarded as useful. In that connection it welcomed the excellent report of the Working Group on Enforced or Involuntary Disappearances after its visit to Sri Lanka (E/CN.4/1992/18 and Add.1), and the report following the visit of the Special Rapporteur on torture to Indonesia and East Timor (E/CN.4/1992/17/Add.1). With reference to the Philippines, a number of recommendations submitted to the Government following the 1990 visit by two members of the Working Group on Enforced or Involuntary Disappearances and by the Special Rapporteur on torture (E/CN.4/1991/20/Add.1), had had positive results. Nevertheless his organization and its affiliate, the Philippine Alliance of Lawyers for Human Rights, were of the view that there was still a long way to go before the recommendations were fully implemented.

17. The implementation of recommendations to Governments under special procedures was just as important as the visits which, in many cases, had inspired the recommendations. In order to monitor the follow-up to the recommendations, the Commission could include in its agenda an item specifically on that issue.

18. As to the independence of the judiciary and the protection of lawyers, the current situation in Guatemala was disturbing. Together with its affiliate, the Guatemalan Human Rights Commission, his organization had for some years past reported to the Commission on the continuing obstacles to the re-establishment of effective respect for human rights in Guatemala.

19. Lastly, the Commission had before it a draft declaration on the protection of all persons from enforced or involuntary disappearances. Adoption of the draft declaration would undoubtedly provide an effective guarantee. At the same time the Commission should take a position on the draft optional protocol to the Convention against Torture. The International Federation of Human Rights supported the draft, as it had already made clear in a written statement circulated as document E/CN.4/1991/NGO/22.

20. Mr. MEJIA (World Organization against Torture) said that in the past 14 months his organization had learned of cases of arbitrary detention, torture or forced disappearances in at least 43 countries, the majority of which were parties to one or other of the international or regional instruments prohibiting such practices. Admittedly, political violence was widespread in some of those countries but that situation had been used as a pretext for repressive measures and, in the majority of cases, the victims were civilians to whom such political violence could not be ascribed; in

general, such actions were perpetrated against members or leaders of organizations or social, political or professional groups or associations for the defence of human rights.

21. The situation in certain countries was of special concern. In Rwanda, about a year ago there had been a number of serious incidents involving forced disappearances, arbitrary detentions, ill-treatment and torture of thousands of persons. In Haiti, following the coup d'état of September 1991, his organization had learned of many cases of arbitrary detention, ill-treatment and systematic torture and some instances of forced disappearances. The reaction of the international community, which had been marked by unanimous condemnation and the adoption of sanctions immediately after those events, now seemed to be less sharp.

22. In Colombia, notwithstanding peace hopes following the promulgation of a new Constitution, the demobilization of guerrilla forces and the surrender by notorious drug traffickers had been followed by violence and extortion perpetrated by State services and paramilitary groups. In 1991, his organization had been obliged to intervene in 197 cases of arbitrary detention, almost all accompanied by ill-treatment or torture. The fact that violence took a number of forms in Colombia explained the relatively small number of cases of detention. According to some sources, in the first nine months of 1991 an estimated 2,895 persons had died for political reasons. In Guatemala, his organization had heard of more than 115 forced disappearances, 283 cases of arbitrary detention and countless cases of ill-treatment and torture. The total immunity of the perpetrators of those crimes was all too well known. There seemed to be no chance that the situation would improve when it was common knowledge that the individuals implicated in serious violations of human rights occupied important positions. The promises by the Guatemalan authorities which had undertaken to guarantee respect for human rights and to put an end to the impunity enjoyed by the perpetrators of those acts, had led to the suspension of the Special Rapporteur's mandate. His organization had already expressed reservations about that decision, which should not be implemented until it was clear that those promises would not be acted upon. In Peru, between March and November 1991, his organization had been compelled to intercede in at least 143 cases of detention accompanied by ill-treatment or harsh torture. It was worrying that the military and security forces tended to use the violence and terrorism in Peru as a pretext for acts of repression against the civilian population.

23. In Tibet, although a number of persons had been freed since the events of 1988, hundreds of others were still in detention. The systematic use of torture or ill-treatment was particular disturbing. In the past 12 months his organization had interceded in 61 cases of arbitrary detention invariably accompanied by violence. In East Timor, which had been occupied since 1975 by Indonesia, his organization had interceded in 25 cases of arbitrary detention accompanied by ill-treatment or torture. In Egypt, the World Organization against Torture had had to intercede in 38 cases of detention of well-known human rights activists, political opponents and demonstrators against the Gulf war. All those arrests had been accompanied by ill-treatment and serious torture. As to Bahrain, his organization had received similar reports about

the arbitrary detention and torture of political opponents. In Sudan, his organization had interceded in 98 cases of arbitrary detention, and at least 22 of the persons involved had been held incommunicado.

24. In Mexico, his organization had interceded in six cases of detention accompanied by ill-treatment and torture. In some regions persons from the indigenous communities and peasants were still victims of arbitrary detention. Responsibility for those practices could in general be attributed to the police, especially the federal judicial police. Sources in Venezuela had reported that, during September and October 1991, there had been 446 cases of degrading or inhuman treatment during detention. There had also been reports of 17 cases of serious torture.

25. His brief summary should not imply that the human rights situation in other countries was more encouraging. The World Organization against Torture considered that it was of the greatest importance to strengthen existing regulation and monitoring mechanisms. It supported the adoption of the draft declaration on forced disappearances and the adoption of the optional protocol to the Convention against Torture.

26. Mrs. NUÑEZ (Commission for the Defense of Human Rights in Central America) said it was public knowledge that serious violations of human rights were still being committed in a number of Central American countries. While arbitrary detention and forced disappearances occurred occasionally in some of those countries, they were systematic in others, such as Guatemala and El Salvador. In recent years the socio-political realities of those two countries had been marked by the sway of the military over civilian society, a phenomenon that had perpetuated repressive institutions. The victims were always men or women who, because they belonged to groups or organizations of a social character or because their ideas questioned the established social order, were regarded by the military as harmful to national stability and harmony.

27. The number of victims of forced disappearances in Central America was still disturbingly high: in El Salvador, in 1991, the non-governmental Human Rights Commission had reported 663 illegal arrests, 78 forced disappearances and 619 cases of arbitrary detention, often accompanied by torture. In Guatemala, the Human Rights Commission had reported 83 cases of detention or disappearances and 778 executions, including 87 who had been tortured beforehand. Forced disappearances were virtually a tradition in the region. From 1980 to 1989, for example, 142 persons had disappeared in Honduras.

28. Moreover, throughout Central America, the system for the administration of justice faced a number of problems: lack of financial resources, and the judiciary's loss of independence. An ineffective remedy of habeas corpus resource in the various countries should also be emphasized. The impunity enjoyed by the perpetrators of human rights violations was an obstacle to the reconciliation process under way in Central America and she therefore urged the Commission to pay special attention to the situation in the countries she had mentioned.

29. Mr. CUSTODIO (Service, Peace and Justice in Latin America) said the Special Rapporteur rightly noted in his report (E/CN.4/1992/17) that, notwithstanding declarations and international standards condemning torture, it was still being used with impunity. In Latin America, for example, where 15 countries had signed the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment, and 11 of them had ratified it, systematic use of torture had been reported in at least five of those States. Torture was employed as a tool for investigation and interrogation and the guilty enjoyed virtually complete impunity because the authorities never took action. An optional protocol to the Convention was therefore wholly desirable so as to prevent such a scourge.

30. Forced disappearances took place virtually the whole world over. In 1991 alone, the Working Group had received complaints about 17,000 individual cases of disappearances. The Governments concerned had taken refuge behind the lack of evidence in the actual persons of the victims so as to cover up the crime. Exhumations in a number of Latin American countries had none the less established beyond a doubt the guilt of members of the security forces when the identities of the bodies coincided with those of persons presumed to have been the victims of a disappearance. Some countries did not even recognize the right of the family to recover the bodies of relatives. In others, such as Guatemala, witnesses and experts involved in the identification process, were the victims of persecution and even death threats by the State security forces. In countries where the family was allowed to recognize victims who had been buried in secret cemeteries, the State did not mete out justice and it let the guilty go unpunished, either by an amnesty, an act of grace or some other method.

31. Poverty and destitution aggravated by the pitiless application of structural adjustment plans in the Latin American economies had produced a wave of social violence which had acted as a pretext for the authorities to justify abuses such as arbitrary arrests and detentions. The situation was even more serious in the case of countries which, like Argentina and Colombia, used the courts or some legislative means to place restrictions on the guarantee afforded by habeas corpus. The establishment of the Working Group on Arbitrary Detention must therefore be welcomed in the hope that it would develop effective measures for protection of the freedom of the individual.

32. The independence of the judiciary was an essential factor in protecting human rights. Unfortunately, however, the judiciary was frequently subjected to manipulation and restrictions which harmed its autonomy and therefore the administration of justice. In a republican democratic government, the independence of the judiciary depended first on non-interference in the appointment of judges. Any manipulation by the Executive or the legislature therefore represented a threat. More serious still was the situation in, for example, Honduras and other Latin American countries, where members of the armed forces who committed violations of human rights were judged by military courts which protected them from ordinary justice and guaranteed their impunity. A truly independent judiciary would undoubtedly be an effective means of combating such a practice. Impunity was precisely one of the obstacles which stood in the way of the peoples of Latin America in their struggle for democracy. Impunity, as a socio-political phenomenon, went beyond the absence of any punishment for persons who violated human rights.

It was granted to a privileged sector of society, and it was matched by an excessively rigorous application of the law to the disadvantaged masses. His organization therefore warmly welcomed the initiative taken by the Sub-Commission on Prevention of Discrimination and Protection of Minorities which had asked for a study on the issue of impunity.

33. At the present session the Commission should take up the issue of impunity in certain States, contrary to their international obligations, to the imprescriptibility of unpunished crimes and to the retroactivity of rules prohibiting impunity. It should approve the draft declaration on the protection of all persons against enforced or involuntary disappearances and resume work on the preparation of a treaty instrument on the crime of enforced disappearance. Lastly, the issue should figure prominently in the agenda of the World Conference on Human Rights to be held in Berlin in 1993.

34. Mr. ZUÑIGA (International Association of Educators for World Peace) said that, every year since 1987, Cuban political prisoners newly released from prison had appeared before the Commission to testify to the horrors they had experienced. He himself had passed almost half of his life in Cuban prisons, where he had been beaten and subjected to torture and to inhuman and degrading treatment and in 1988 had told his story direct to members of the Commission on Human Rights, in the presence of the authorities, in the Combinado del Este prison in Havana. Those practices continued in Cuba and there was no reason, if nothing practical was done, for them ever to stop. The many complaints from persons held in Cuban prisons left no doubt about the systematic and pernicious character of the ill-treatment meted out to political prisoners.

35. In the arsenal of cruel treatment of every kind employed by the Cuban regime, special mention must be made of abuses of a psychiatric nature. In every psychiatric hospital a special ward was set aside so that the State security services and the Ministry of the Interior could mentally crush political opponents. Such abuses had been described in a book containing the testimony of the victims, the resulting complaints were also included in the report of a human rights organization named "Asopazco", which had been filed with the Commission Secretariat.

36. Disappearances, some of which had been reported to the United Nations Special Representative, were other instances of the serious violations of human rights systematically perpetrated in Cuba. But every year thousands of Cubans had also disappeared into the waters of the Gulf of Mexico during attempts to flee from the island and its ignominious discriminatory regime. The catalogue of human rights violations by the Cuban regime included the "captive village" system (pueblos cautivos) on which the International Association of Educators for World Peace would be submitting a report to the Commission in the near future. The villages held, for an average of three years and often without charge or trial, peasants who, according to the testimony of one of them, were forced to build the village in which they were kept captive. The unfortunates had committed the only crime of not being in sympathy with the Cuban "revolution".

37. Lastly, Cuba was a country which used the death penalty as a political deterrent. Actually, under the Cuban Penal Code, the great majority of the crimes involving the death penalty were of a political character. The Castro

regime had shot thousands of people and had sometimes even broadcast the event on television. By virtue of Act No. 988 of 1961, the death penalty could be applied within 48 hours to persons arrested for offences classed as "counter-revolutionary", particularly when the persons were guerrillas. Several young people were awaiting the firing squad; Eduardo Díaz Betancourt had been shot a few days ago to the indignation of the public. The sorry reality experienced by the Cuban people required the Commission to take a firm position: only a resolution condemning the Castro regime seemed capable of stopping its criminal practices.

38. Mrs. SCHULLER (Commission of the Churches on International Affairs of the World Council of Churches) said that, yet again, she wished to draw the attention of the international community to a country with the cruellest political violence in the whole of the Americas, namely Peru. In October 1991, in a follow-up to a visit the previous year by an international ecumenical commission, the World Council of Churches had sent a mission to Peru in order to mark its solidarity with the Peruvian Church and with all who defended human rights. A further purpose had been to pursue a dialogue with the authorities on human rights in Peru and to judge the extent to which the situation had grown better or worse during the previous year. In its report, the commission had reached the conclusion that, since October 1990 the general situation in Peru had continued to deteriorate. The escalation of political violence had led to a confrontation between the insurgent groups, particularly Shining Path, and the Peruvian security forces. Against that background, the list of extra-judicial executions, massacres, torture and forced disappearances perpetrated by the security forces had grown steadily longer.

39. On 3 November 1991, a few yards from the National Congress, 17 persons, including a nine-year old child, had been killed in cold blood by a death squad during a holiday. The place where the incident had occurred was 50 yards from an office of the intelligence services. The crime remained unpunished. A Senate commission of inquiry had been appointed after a senator had produced confidential intelligence service documents from which it was apparent that the scene of the crime had been under surveillance. Some weeks later, in Legislative Decree No. 733, the Executive had declared that any person divulging confidential intelligence service documents would be imprisoned. The number of dead whose killers had never been identified had reached 270 in 1991, or 36 per cent more than in 1990. Persons guilty of human rights abuses enjoyed flagrant impunity. While some members of the police had been tried, no member of the Peruvian armed forces had been sentenced by an ordinary court for violations of human rights. Members of the armed forces were judged by military courts whose decisions were not disclosed, and hence a democratic check could not be kept on them.

40. There was only one explanation for such a situation: the authorities, which for many years past had tolerated very serious violations of human rights, had no political will whatsoever to create a climate conducive to peace. That was clear if one bore in mind that, in the first eight months of 1991 an average of one detainee a day had disappeared, a rate which had slowed to one disappearance every three days, only in the past four months as a consequence of international pressure exerted in the struggle against drugs in the countries of the Americas. On the day he had taken office, the

President of the Republic had promised to appoint a presidential commissioner for peace and human rights and later to create a presidential commission for the protection of human rights. Twenty months later, nothing had been done.

41. None of the facts described could justify the terrorism of the subversive movement Shining Path, which, with 3,500 murders committed in cold blood in the past three years, 80 per cent of the victims having been unarmed civilians, was without any doubt the most cruel movement of the western hemisphere. Catholic priests and members of religious orders had been murdered; more than 300 of the victims had belonged to evangelical churches, something which gave an idea of how ferocious the movement was. However, barbarity could not be met with barbarity and, in the final analysis, it was Peru that was being destroyed by the armed conflict.

42. The Commission of the Churches on International Affairs nevertheless considered that the situation in Peru could be improved provided, first, the present Government demonstrated real political will to protect human rights; second, the international community demonstrated its solidarity in practical terms on the issues of the external debt and aid for economic development; third, the Commission on Human Rights took a position on the situation in Peru and considered designating a special rapporteur or an independent expert as an observer and adviser to the Peruvian Government; and fourth, respect for the fundamental rights of the Peruvian people was safeguarded regardless of the many forms of violence in that country.

43. The World Council of Churches supported the draft protocol to the Convention against Torture as an instrument which would be of great assistance in ensuring respect for the fundamental right not to be subjected to torture or other cruel and inhuman treatment. The emphasis in the protocol on the cooperation required from States parties to clear up the facts and prevent torture was an important step on the road to strengthening worldwide respect for fundamental human rights.

44. Mrs. GARGAR (Fondation France-Libertées) drew the Commission's attention to the situation in Guatemala, where human rights continued to be ignored despite the promises given by Mr. Serrano, the President of the Republic, when he had taken office and subsequently, in August, at the United Nations. The year 1991 had seen the return of terror, perpetrated mainly by paramilitary groups, civilian self-defence patrols and the army, in the form of murders of churchmen and death threats against politicians and, in particular activists of the "Runujel Junam" Ethnic Communities Council (CERJ). The CERJ was fighting to do away with the civilian self-defence patrols in rural areas, which were responsible for the majority of human rights violations in the countryside but enjoyed protection from the army and could therefore act with complete impunity. In order to block proper investigations of those violations, pressure was put on examining magistrates and policemen, who were often threatened with death and sometimes even murdered.
Mr. Vasquez Martinez, former President of the Supreme Court, had condemned the lack of protection for members of the Guatemalan judiciary as one of the principal causes of the impunity enjoyed by those guilty of human rights violations. In response to repeated international condemnation by the United States and Europe, the new Government had announced the imprisonment of, among others, seven members of the military guilty of the group killing

of 11 persons on 9 August 1991, and Jesus Betata, suspected of killing Myrna Mack. However, no officer had yet been troubled even though their participation in those murders was well known. The expert appointed by the Secretary-General to examine the situation of human rights in Guatemala, Mr. Tomuschat, had also spoken of coordination between high-ranking, and middle-level officers and the troops in those cases.

45. As the International Federation of Human Rights had pointed out in the report on its April 1991 mission, the current situation in Guatemala was not one of the rule of law but one of masked State terrorism, characterized by the exercise of total and unconditional power by the army, the absence of civil authority and the lack of a credible and independent judiciary. Her organization considered that, under item 12 of its agenda, the Commission should designate a special rapporteur to examine the human rights situation in Guatemala. Such a decision would be the prerequisite for any improvement in the situation of the Guatemalan people and the reincorporation of Guatemala among democratic countries governed by the rule of law.

46. In Colombia, the adoption of a new political Constitution, the reshaping of the war against drug traffickers, the reintegration into civilian life of three guerrilla groups and the beginning of talks with the Coordinación guerrillera Símon Bolivar stood in sharp contrast to a questionable reform of justice and the continuation of a critical human rights situation. The impunity enjoyed by the perpetrators of human rights violations was also a matter of concern. Fifty-six per cent of the 465 cases of disappearances attributable to agents of the State had not been investigated and only five members of the police and the armed forces had been punished. In its report on its visit to Colombia in 1988 (E/CN.4/1989/18 and Add.1), the Working Group on Enforced or Involuntary Disappearances pointed out that "security legislation specifically geared to combating terrorism ... has dramatically widened the circle of those whom the security measures affect. As a consequence, the legal protection of individual citizens against abuses by public forces appears to have diminished". It therefore considered that a fundamental revision of the police powers exercised by the armed forces within the security services was essential in order to provide a better guarantee for the fundamental rights of citizens. Unfortunately the Colombian State had done nothing to follow up the Working Group's recommendations. It was none the less clear that attacks on the right to life could not really be cut down unless the people responsible for such violations were punished in an exemplary manner and that the judiciary would not help combat the phenomenon of forced disappearances unless it respected the judicial guarantees set out in human rights instruments.

47. Mrs. GRAF (International League for the Rights and Liberation of Peoples) said that, almost every day, the news from Turkey dispelled the illusion that a process of democratization was under way in that country. In April 1991, the Turkish Government had enacted an anti-terrorism law which not only violated provisions of international law on human rights but also allowed it to step up repression. Article 8 of the law, which prohibited any written or verbal propaganda adversely affecting the indivisible unity of the State, its territory or the nation, made it impossible for journalists or writers to mention the Kurdish question or the Kurdish region without being liable to penalties. Thus, the Turkish Parliament had not had to abolish the 1932 law

prohibiting the use of the Kurdish language, which was still forbidden on radio and television, in teaching and official institutions. The fact that the Kurds were currently represented in the Turkish Parliament did not mean that they could freely exercise their right to freedom of expression: Kurdish parliamentarians were elected from the slates of other parties, for the establishment of Kurdish parties was not authorized. A flagrant example of the denial of the freedom of expression was the case of the Turkish writer and sociologist, Ismail Besikçi, who had been sentenced to 22 years' imprisonment because of his writings on the Kurdish people. He had been released on 31 October 1991 and then arrested again on 24 November on charges of separatist propaganda. The newspaper, "Democrat", which had published an article on him, had been banned under article 8 of the anti-terrorism law and many journalists were victims of aggression.

48. Clearly, freedom of expression was not respected in Turkey. That was evident from the fact that in Istanbul, five members of the Committee for the Rights and Freedoms of the Kurdish People had been arrested by the police as they were sending a telegram to the United Nations representative in Ankara to protest against the Turkish military operation carried out in southern Kurdistan under Iraqi domination. The slightest demostration was put down brutally and since 15 June 1991 it had been forbidden in the 13 Kurdish provinces to wear clothes of red, green and yellow at the same time, as those colours symbolized the Kurdish national movement. Members of the People's Labour Party, the HEP, a pro-Kurdish opposition party, were a favourite target of the police. The party head in Siirt, along with two other persons, had recently disappeared and everything indicated that they had been abducted by the counter-guerrilla, a paramilitary organization with links with the State. According to statistics published by the Ministry of Justice, in November 1991, there were 26,707 persons in prison, of whom 1,488 were political prisoners, including some allegedly subjected to torture. Moreover, entire villages had been forcibly evacuated, houses set on fire and the inhabitants subjected to ill-treatment. The new Government had, however, done nothing to conduct inquiries into such incidents or prevent any recurrence in the future. Lastly, the implementation of the European Convention on Human Rights, which Turkey had ratified, had been suspended in the Kurdish provinces since August 1990.

49. Her organization strongly urged the Commission to adopt the draft declaration on enforced or involuntary disappearances submitted by the Working Group. It also considered that an optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment would be an effective tool to prevent torture and would encourage States to improve the treatment of persons deprived of their liberty. She suggested that the Commission should establish a special working group to look into the matter.

50. Mrs. NEURY (Centre Europe-Tiers Monde) said that her organization (CETIM) fully supported the draft optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and requested the Commission to establish an open-ended working group to look into the matter.

51. Turkey had been party to the Convention against Torture since 1988 and should therefore respect its obligations under the Convention. However, many recent reports by international human rights organizations indicated that that was not the case. The new anti-terrorism law enacted by the Turkish Government on 12 April 1991 violated a number of international human rights provisions. On the basis of article 15 of the law, members of the armed forces or the police and intelligence officers or other officials who might have committed offences in the exercise of their official duties had the benefit of special treatment; action was taken only against those who were considered to be guilty of "crimes or attempted murder", which was difficult to prove and so State officials accused of torturing persons in custody had been able to evade justice. Moreover, the new law allowed the Turkish regime to silence the Kurdish people even more. According to the definition contained in article 1, a "terrorist" was deemed to be any person exercising simple "pressure" and an "organization" was any group of two persons who met for a common end, something which opened the way to arbitrary arrests. Such arrests, which were on the increase in north-west Kurdistan, were intended to intimidate and terrorize the Kurdish population and break the national resistance movement.

52. CETIM was also concerned about the many acts of violence committed by the Turkish police against the Kurdish civilian population in recent months. For example, on 24 and 25 December 1991, the forces of law and order had opened fire on a crowd of demonstrators in Kulp and Lice, killing 10 persons. Moreover, bomb attacks, particularly against persons and organizations involved in the defence of human rights and against journalists, were on the increase. Repression had come out into the open and terror, previously spread in rural areas, was now present in urban areas too. It was also disturbing that, since the entry into force of the anti-terrorism law, there had been a sharp rise in cases of disappearances and extrajudicial executions. In most cases, dead bodies showing obvious signs of torture were discovered a few days after the abduction of the persons in public places. Nobody was spared; victims could be workers, members of universities, peasants, young or old.

53. Although a minister for human rights had recently been appointed in Turkey, no measures had been taken to put an end to the systematic torture, arbitrary arrests, extrajudicial executions or disappearances. For that reason her organization urged the Commission to do all it could to ensure that Turkey respected the Convention against Torture and abolished the anti-terror law, which breached the provisions of international law.

54. Mr. AKTAN (Observer for Turkey), replying to points raised, reminded non-governmental organizations making allegations against Turkey, without, moreover, taking the trouble to ascertain whether their sources of information were credible or reliable, that his country was currently the object of the continuing attacks by terrorists instigated from abroad and that they were responsible for the deaths of more than 1,000 civilians. He also drew attention to the fact that Turkey was party to a number of international conventions, including the European Convention against Torture, and that as a consequence Turkish citizens who claimed to have been victims of torture were entitled to petition the European Commission on Human Rights or have redress in the European Court of Human Rights, whose jurisdiction Turkey recognized. Those NGOs would perhaps do better to provide financial and legal assistance

to alleged victims of torture in Turkey to enable them to have recourse to such protective machinery rather than try to tarnish the image of his country in the eyes of the international community.

55. Turkey was a democratic country in which the Kurdish people was represented in parliament by over 100 deputies. Freedom of the press and freedom of opinion and thought were fully respected and the judiciary was wholly independent and impartial. All new legislation and reforms had been outlined in document E/CN.4/Sub.2/1991/53, which had been submitted to the Sub-Commission. Moreover, the linguistic, ethnic and cultural rights of the Kurds were recognized, although those rights were apparently not a matter of concern to the terrorist organization - the PKK - active in Turkey or the NGOs in question, which refrained from condemning the murders, abductions and torture committed by the terrorists. Their ultimate objective was the dismemberment of Turkey. They were therefore acting in violation of international law and should reread article 30 of the Universal Declaration of Human Rights and the text of General Assembly resolutions 2625 (XXV) and 40/61. Until they condemned such terrorist acts, they would convince no one that they were in favour of human rights and against violations.

56. Turkey was determined to fight terrorism and would not allow itself to be impressed by NGOs seeking to use the issue of human rights for political ends. The Republic of Turkey was neither the Ottoman Empire nor a former communist country and anyone who entertained any illusion of secession or of the creation of a new nation would do well to bear that in mind. It was essential, in order to ensure the safe conduct of the deliberations of the Commission, that human rights should not be used as a pretext to launch attacks on the territorial integrity and the political union of United Nations Member States, which were the very basis of the Organization.

57. Mr. EISSA (Arab Lawyers' Union) drew the Commission's attention to the many human rights violations following Iraq's invasion of Kuwait, as attested in the report of the Special Rapporteur (E/CN.4/1992/26). The violations persisted with the problem of Kuwaiti prisoners still held in Iraq and the continued blockade against that country. His organization asked for the blockade to be lifted for Iraqi women and children and for Kuwaiti detainees to be released. The rise of fundamentalism in that country was also regrettable and the Government had had to take urgent measures which had, in turn, led to excesses, namely detentions and torture.

58. His organization also wished to inform the Commission of the very bad human rights situation in the Horn of Africa. Many tribal wars had broken out in that region and had severely affected the population. In Somalia, human life had become worthless and many crimes or acts of torture were being perpetrated in the streets in broad daylight. Malnutrition spared nobody, the power of the State was disintegrating day by day and the judicial system no longer functioned. Political opponents were not brought to court but were simply assassinated. Such a state of affairs therefore deserved the full attention of the international community, particularly as there were many reports attesting to the seriousness of the situation.

59. In Sudan, the situation had further deterioriated since the Commission's previous session, and the military authorities which had taken power in

June 1991 had proclaimed a state of emergency and imposed a curfew. The independence of the judiciary was no longer assured and qualified judges had been replaced by members of the Islamic Front. The supreme court system had been abolished and citizens were deprived of their right to a fair trial. The authorities continued to imprison large numbers of the Sudanese population in "ghost prisons" controlled by Islamic Front members, who were the sole witnesses of the torture which took place in them. All Government opponents had been arrested and tortured and would have been executed had not the international community exerted pressure; as a result, the sentences had been commuted to life imprisonment. In addition, extreme poverty held sway throughout the country and demonstrations were becoming increasingly frequent in the capital.

60. His organization was grateful to Amnesty International for the valuable support it provided. It called on the Commission to pay all the necessary attention to the problem and on NGOs to assist victims of torture in Sudan. In addition, it urged the United Nations Voluntary Fund to provide assistance to the victims of torture. Lastly, it wished to associate itself with all those who had spoken in favour of the draft optional protocol.

61. Mr. LITTMAN (International Fellowship of Reconciliation) said it was gratifying that the new United Nations Secretary-General, Mr. Boutros-Ghali, had expressed his commitment to continuing the efforts by the United Nations to secure the release of all hostages held in Lebanon. The United Nations and the International Committee of the Red Cross should do everything possible to achieve that objective. In that respect, he asked the Commission to adopt a resolution strongly condemning the barbarous practice of political hostage-taking, which had been going on in Lebanon for some eight years.

62. On 14 February 1989, Ayatollah Khomeini had issued a death sentence against Salman Rushdie, the writer. The Commission had then been holding its forty-fifth session and he had appealed to members on that occasion openly to condemn such action. With the exception of the representative of the 12 countries of the European Community and the representatives of the United States, France and the United Kingdom, nobody had made any statement on the matter. Even the two reports relating to the right to freedom of opinion and expression (E/CN.4/Sub.2/1990/11 and E/CN.4/1991/9) had remained silent on the question. The years were going by and Salman Rushdie was still living in the shadow of that death sentence. The representative of the Islamic Republic of Iran, in a statement to the General Assembly on 7 December 1984, had maintained that the Universal Declaration of Human Rights, which drew directly on Judeo-Christian traditions, could not be implemented in the Muslim world and did not accord with the system of values recognized by the Islamic Republic of Iran. He had added that his country would therefore not hesitate to violate its provisions, since it had to choose between violating divine law and violating secular conventions. The fact remained that the emissaries of death, justifying themselves on the grounds of a so-called holy right, continued to roam the world in search of literary and other victims. It should be remembered that the Japanese translator of Salman Rushdie's book, "The Satanic Verses", had been struck down in Tokyo in July 1991, that the Italian translator of the book had been attacked, and that the former Iranian Prime Minister, Mr. Shaphur Baktiar, had been assassinated. Whatever the reasons for the international communities silence, such crimes must be

instantly condemned if they were not to be tacitly condoned. He reminded the Commission that resolution 1990/8 adopted by the Sub-Commission on Prevention of Discrimination and Protection of Minorities, had strongly condemned the assassination of Professor Kasem Rejavi. Could not the Commission, in its turn, react officially in connection with the Rushdie affair and, specifically, condemn the related assassinations or threats of assassination of publishers, writers and translators? All attempts at intimidation should be resisted, for which reason it was the duty of NGOs to ask questions in the Commission, in the exercise of the very precious right of freedom of opinion and expression. The Commission, which was considered to be the personfication of the world's conscience on human rights issues, had a moral duty to prepare a resolution or declaration concerning such a serious matter, which challenged freedom of opinion and the right to life.

63. Mr. KHOURI (Syrian Arab Republic), speaking in exercise of the right of reply, referred to the accusations made against his country by Amnesty International and the International Federation of Human Rights. In the report contained in document E/CN.4/1992/17, on torture and other cruel, inhuman or degrading treament, there was no mention of any case of torture in Syria. It was regrettable that such accusations often came from NGOs which were a priori hostile to the country being accused. Such organizations should first make sure that there were good grounds for their allegations.

64. Mr. FERNANDEZ (Cuba), speaking in exercise of the right of reply, said that the accusations made against his country by Mr. Zuñiga were part of the anti-Cuban campaign being waged by the United States Government. He accused the United States authorities of financing the International Association of Educators for World Peace and referred to past events in the life of Mr. Zuñiga, who, had received CIA financial backing and had been arrested by the Cuban authorities as he was preparing to launch a terrorist campaign in Cuba. He had later been convicted by a Cuban court and then sent back to the United States in 1988.

65. Allegations of cases of torture in Cuba were completely unfounded; non-governmental organizations should not be allowed to serve the political interests of foreign powers or make false accusations in an international forum.

66. Mr. AL-DOURI (Iraq), speaking in exercise of the right of reply, said it was deplorable that the representative of the Arab Lawyers' Union should have appointed himself spokesman of the supporters of the new international order under the auspices of a well-known major power. Unfortunately, Mr. Eissa had refrained from naming that country when he had condemned the continued blockade against Iraq. His delegation also expressed regret that the representative of the Arab Lawyers' Union, apparently unaware of what had really happened during the Gulf conflict, should have considered it sufficent simply to echo reports by a sector of the press which had little concern for objectivity.

The meeting rose at 6 p.m.